

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

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In the Matter of:

**ADMINISTRATIVE ORDER
ON CONSENT**

March Mountain Properties, LLC
Old Trail Village
1005 Heathercroft Circle
Suite 100
Crozet, VA 22932

Docket No. CWA-03-2016-0110DN

Respondent

Property located at:

Old Trail Village

30° 03' 30.75" N

78° 42' 36.74" W

I. STATUTORY AND REGULATORY BACKGROUND

1. EPA has made the following findings of fact and issues this Administrative Order on Consent ("Consent Order") pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA Parts in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such Part or requirement.

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

4. Federal regulations promulgated pursuant to the CWA define the phrase "waters of the United States" to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters adjacent to these waters. 40 C.F.R. § 122.2.

5. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2

6. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that storm water discharges are "point sources" subject to NPDES permitting requirements under section 402(a) of the CWA, 33 U.S.C. § 1342(a).

7. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

8. "Storm water discharge associated with industrial activity" is defined as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant...". The term includes storm water discharges from facilities classified as Standard Industrial Classification ("SIC") 24.

9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

10. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia NPDES program on March 31, 1975. The Virginia Department of Environmental Quality ("VADEQ") was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth's request to transfer the issuance of general and individual NPDES permits from VADEQ to the Virginia Department of Conservation and Recreation ("VDCR"). On July 1, 2013 EPA approved the Commonwealth's request to transfer issuance of NPDES permits from VDCR to VADEQ.

11. On July 1, 2009 Virginia issued General Permit No. VAR10, General Permit For Stormwater Discharges Associated With Construction Activity, effective date July 1, 2009 and expiration date June 30, 2014 (the "2009 General Permit"). The 2009 General Permit authorized the discharge of stormwater from construction activity to surface waters of the Commonwealth of Virginia provided that the owner of a source covered by the 2009 General permit filed a registration statement to be covered by the 2009 General Permit and complied with all the requirements of the 2009 General Permit.

12. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within Virginia for NPDES permit violations.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

13. March Mountain Properties, LLC ("Respondent" or "March") owns and operates a commercial operation, a mixed-use, large residential and commercial land development located at 1005 Heathercroft Circle, Virginia 22932 (the "Site"). The Site is classified under SIC Code 1531. The site drains to unnamed tributaries to Slabtown Branch and Lickinghole Creek.

14. Respondent is a limited liability corporation, and therefore a "person" within the meaning of Part 502(5) of the Act, 33 U.S.C. § 1362(5).

15. Respondent submitted a registration application to VADEQ, VSMP General Permit No. VAR 10 for Storm Water Discharges Associated with Construction Activities Registration Statement on December 1, 2011 in order to obtain authorization for its discharges of stormwater from the Virginia facility.

16. Respondent's Virginia facility discharges stormwater to Slabtown Branch and Lickinghole Creek and their associated tributaries. Slabtown Branch and Lickinghole Creek drain to the South Fork Rivanna River Watershed, a "waters of the United States" within the meaning of Part 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

17. On April 10, 2014, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's Virginia facility ("Site inspection").

18. On October 7, 2014, EPA sent Respondent a copy of its Site inspection report.

19. Based upon the Site inspection, EPA representatives identified the following violations of the 2009 General Permit and the CWA as described below.

20. **Failure to Develop or Update the Stormwater Pollution Prevention Plan ("SWPPP") in accordance with Section II.A.1. of the Construction General Permit ("CGP").** At the time of the inspection, the SWPPP, dated December 7, 2011, prepared by

Collins Engineering, did not appear to have been prepared and/or updated in response to the issuance of the current Permit, General Permit No. VAR10 for Stormwater Discharges Associated with Construction Activities.

21. **Failure to Post Notice of NPDES Permit Coverage in accordance with Section II.B.4. of the CGP.** March's posted notice did not contain the information required in the permit, including signature, SWPPP Review and making SWPPPs available as required by the CGP.

22. **Failure to Conduct Site Inspections in accordance with Section II.D.4. of the CGP.** The frequency of site inspections were not conducted in accordance with permit requirements. Specifically, inspection documentation was not provided or available prior to July 18, 2012; however, the Permittee had obtained Permit coverage in approximately January 2012. In addition, inspection documentation was not provided or available from July 18, 2012 through October 23, 2013. Furthermore, the EPA Inspection Team noted that the personnel signing the inspection documentation were not identified in the SWPPP.

23. **Failure to Properly Document Inspection including Follow up Activity in accordance to Section II.D.4.d. of the CGP.** March did not properly document observations made during site inspections as required under the CGP nor did they make note of corrective measure taken after to address deficiencies.

24. **Failure to Maintain Controls in Violation of Section II.D.3. of the CGP.** March failed to properly maintain control measures and effective operating condition in accordance with good engineering practices in the following areas: rock check dams; storm drain inlet protection; soil stabilization measures.

25. **Failure to Implement Controls to Minimize Pollutants in Violation of Section II.D.2. of the CGP.** March failed to install control measures to minimize pollutants at the Stone Construction Entrance as well as Soil Stabilization Measures throughout the Site.

26. **Failure to Protect Water Quality in Violation of Section I.H.1. of the CGP.** March failed to select, install, implement and maintain a control measure at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standards.

III. ORDER

AND NOW, this 27th day of June, 2016, pursuant to Part 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED, pursuant to Part 309(a) to do the following within thirty days of the effective date of this Consent Order:

27. Respondent shall take all actions necessary to comply with the effective Virginia General Permit For Stormwater Discharges Associated With Construction Activity, including:

- a. Continue to update the SWPPP in accordance with the permit and good engineering practices;
- b. Post notice of NPDES permit coverage that includes all required information;
- c. Conduct site inspections in accordance with the schedule set forth in the permit;
- d. Properly document inspection, including but not limited to, documenting corrective actions taken;
- e. Install erosion and sediment controls as prescribed in the facility's erosion and sediment plan to minimize pollutants and protect water quality in the receiving waters;
- f. Properly maintain installed control measures, including but not limited to, rock check dams, storm drain inlet protection, and soil stabilization measures.

28. All documents required by Paragraph 27 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

All documents required herein shall be submitted to:

Joy M. Gillespie
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

29. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

30. This Order does not constitute a waiver or modification of the terms or conditions of the applicable General Permit For Stormwater Discharges Associated With Construction Activity. Compliance with the terms and conditions of this Consent General Permit For Stormwater Discharges Associated With Construction Activity Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

31. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

32. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

33. By entering into this Consent Order, Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 6/27/16

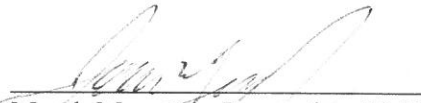


Jon M. Capacasa

Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

Date: 4/27/16



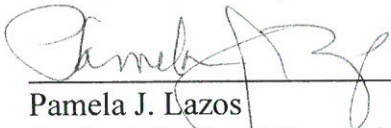
March Mountain Properties, LLC
Corporate Official

James L. Jessup, Jr.
Manager of March Mountain
Properties, LLC

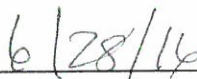
CERTIFICATION OF SERVICE

I hereby certify that I sent a true and correct copy of the Administrative Order for Compliance to March Mountain Properties via certified mail, return receipt requested, at the address listed below after filing the original with the Regional Hearing Clerk, US EPA Region III, 1650 Arch St., Philadelphia, PA 19103.

March Mountain Properties
Old Trail Village
1005 Heathercroft Circle, Suite 100
Crozet, Virginia 22932



Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III



Date: